

IN THE MATTER OF

JIM KLEINER

Petitioner

: BEFORE THE

: HOWARD COUNTY

: BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 12-002S

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DECISION AND ORDER

On April 19, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Jim Kleiner for a variance of the Sign Code to erect a 6' (height) x 12' (width) freestanding pylon sign with a total height of 18 feet, 24.58 feet from the Baltimore National Pike (US 40) right-of-way (ROW) in a B-1 (Business: Local) Zoning District, filed pursuant to Section 3.513, Title 3, of the Howard County Code (the "Sign Code").¹

The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. No one appeared in opposition to the petition.

The record was held open for one week to allow Petitioner time to provide certification that notice of the hearing was advertised and that the subject property was posted as required

¹ During the proceeding, the Petitioner amended the requested ROW setback, increasing it from 20.58 feet to 24.58 feet.

by the Howard County Code.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. Property Identification. The subject property is located on the northerly, westbound side of Baltimore National Pike (the "Property") and is also known as 9450 Baltimore National Pike. The Property is located in the 2nd Election District in Ellicott City and is referenced as Tax Map 24, Block 4, Parcel A-2.
2. Property Description. The .4-acre, generally rectangular Property is improved by the BB&T bank building and drive-through kiosk. The bank building is located 140 feet from the roadway and is not visible to either westbound or eastbound motorists.
3. Vicinal Properties. The R-12 (Residential: Single Family) property to the north and west is improved by the single-family dwellings comprising the Valley Meade Subdivision. To the south, across Baltimore National Pike is the B-2 (Business: General) zoned Tongnamoo House Restaurant and Pub. The B-2 zoned property to the east is improved with a one-story Midas Muffler repair shop. The Midas Muffler shop is sited close to the road and obstructs westbound motorists' view of the BB&T building. A large stand of trees adjoining the Property on its west property line obstructs eastbound motorists' view of any conforming sign.
4. Speed Limit. The speed limit on Auto Drive is 25 MPH.
5. The Sign Variance Request. The Petitioner is requesting a variance under Section

3.501.C of the Sign Code to erect a 6' (height) x 12' (width) freestanding pylon sign with a total height of 18 feet, 24.58 feet from the Baltimore National Pike ROW. The double-sided sign face would contain the bank's logo—"BB&T"—on the top section with the words "24 hour banking" below it. The sign would be internally illuminated with photocell cutoffs.

6. Mr. Kleiner testified that the technical staff report photograph and comments on Page 7 incorrectly identifies the view as looking east on Baltimore National Pike, explaining that it is actually a second view of the property looking west (Page 6 also depicts a view to the west). He therefore objected to the report's conclusion that these two photographs evidence that the current sign is "clearly viewed for about 1056 [feet] while traveling east or west on Baltimore National Pike, making the existing BB&T sign more visible than most along the Baltimore National Pike corridor." Mr. Kleiner further testified that this mistake erroneously leads the technical staff report to conclude that the requested variance is not the minimum necessary to afford relief. He acknowledged that the proposed sign's edge would be closer to the ROW than the existing sign. However, he agreed to move the sign some four feet further into the site.

7. During the Hearing Examiner's site visit, she observed the sign while traveling eastbound on Baltimore National Pike, but is unsure of the distance from which the sign could be viewed.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing

Findings of Facts, I conclude as follows:

1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The proposed sign would be located on a highway that has a dependency on nonlocal use in accordance with Section 3.513(b)(1).

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

The Midas Muffler Building and the trees to the west of the Property impede motorists' view of a complying sign, causing practical difficulties and unnecessary hardship in complying with this subtitle. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

There is no evidence that granting of the variance would adversely affect the appropriate use of development of adjacent properties, nor result in a dangerous traffic condition.

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

The proposed sign is intended to comport with updated corporate signage requirements. The Petitioner originally proposed to locate the sign 20.58 feet from the ROW, but agreed during the proceeding to set it back an additional four feet so the sign face would not extend further into the ROW than the existing sign.

Additionally, the reconfiguration of the sign face is intended to incorporate the availability of 24-houring banking. On the existing sign, this information appears on a separate changeable sign face below the BB&T sign. The proposed sign is of a reasonable size to convey this information.

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of unique Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

Jim Kleiner

ORDER

Based upon the foregoing, it is this 7th day of May 2012, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Jim Kleiner to erect a 6' (height) x 12' (width) freestanding pylon sign with a total height of 18 feet, 24.58 feet from the Baltimore National Pike (US 40) right-of-way (ROW) in a B-1 (Business: Local) Zoning District, is hereby **DISMISSED** if the Petitioner fails to provide the requisite certification that notice of the hearing was advertised and that the subject property was posted as required by May 4, 2012.

Alternatively, should Petitioner provide such notice, the petition is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 5/7/12

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.